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Still Endemic in Asia

STATEMENT  
and  
PAPERS  
from the Seminar on Ways  
The Religious Groups can  
Promote the UN Convention  
Against Torture and Other  
Forms of Inhuman and  
Degrading Treatment or  
Punishment

21-25 February 2000

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*organised by*

Religious Perspective on Human Rights  
Asian Human Rights Commission

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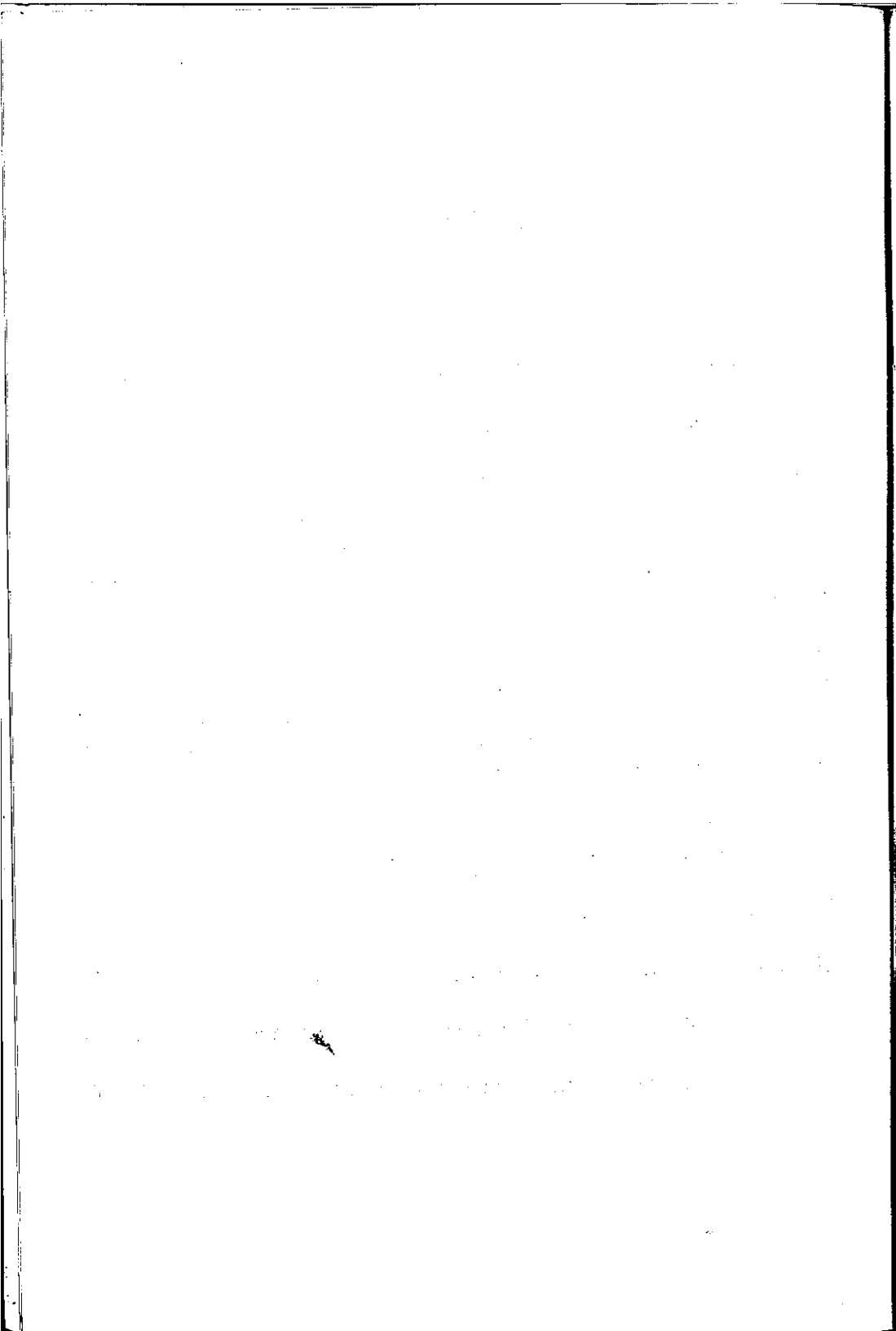
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## Introduction

The workshop that was conducted in Bangalore with the participation of members of the various religious persuasions marks another significant step in promoting human rights among the religious groups in Asia. A program initiated by Asian Human Rights Commission (AHRC) had as one of its main objectives the education of the religious groups, both lay and religious, in human rights. Implicit in this initiative is the recognition that a religious ethos still persists in Asia and that in the imparting of human rights the role and the function played, not only by the religious personnel but also by the rich symbolism, values and principles, cannot be minimized.

Pursuing this train of thought, the issue of torture was identified as being central to human rights issues in Asia, consequent to which the workshop was organized. The widespread use of torture is found to be symptomatic of the breakdown of the system of law and order in the larger society. Thus a discussion on the phenomenon of torture is an indirect affrontment of a larger malaise relating to the state and the police and to their relationship with the society. Torture reflects the inability of the law enforcement authorities to play by the rules of the game – in fact the institutions safeguarding and implementing the rules have collapsed or are on the verge of collapsing.

With the reality of torture and the related problem of the collapse of these systems, which are so central and affect every part of the society, it is impossible for the religious who form part and parcel of that society to remain untouched. It is inevitable that their lifestyles, activities, movements and relationships begin to be affected by this turn of events. It is in this context that the work of the religious groups assumes paramount importance. Adoption of measures aimed at gaining people's confidence in the legal systems, collaboration with the committed legal experts in bringing about the required changes in the legal structures, ensuring a constant dialogue at the level of the community on the rights of the people – these things become major challenges to the religious groups. The workshop at Bangalore is only an occasion to articulate this challenge and to map out proper strategies.

The workshop was marked by lively discussions representing experiences, views, opinions and concerns by the members of various religious persuasions: Buddhist, Hindu, Muslim and Christian. Despite the divergence of their backgrounds there was unanimity regarding the need to face this challenge as indifference would spell demoralisation and societal chaos. The churches that espouse non-violence, respect for life and liberty have very much to gain from the promotion of the UN *Convention Against Torture and Other Forms of Inhuman Treatment or Punishment*

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Religious Perspectives on Human Rights  
Asian Human Rights Commission (AHRC)  
Hong Kong  
25 - 03 - 2000

*The Regional Workshop from 21 - 25 February, 2000 on the UN Convention on Torture at Bangalore, India*

## Concept Paper for the Workshop

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During the last two decades there has been much interest on the issue of 'Torture, Inhuman and Degrading Punishment' due mostly to the efforts of the United Nations. The Convention against Torture Inhuman and Degrading Punishment passed in the UN, has been adopted by many countries. In some countries the Courts have also taken cognizance of the new law and have at times tried to impose the provisions of the new convention when actual cases were heard.

By and large there seems to be a mentality in all sectors in the administration of justice to take rather a tolerant attitude regarding torture, inhuman and degrading punishment meted out by the law-enforcing authorities on citizens, particularly the poor. A tacit acceptance of torture as a means of criminal investigations remains still rather prominent. This is not withstanding the fact that many countries are signatories to the International Convention on Civil and Political Rights (ICCPR) and to the Convention Against Torture and Inhumane and Degrading Punishment. Some countries have even promulgated their own laws in keeping with the said Convention. However, these legal provisions remain in the book. And in actual practice completely different situations exist. The attention of the human rights community in each country, the region and the international community must specially be directed towards this issue.

The type of torture that is prevalent in several countries is extremely gruesome and inhuman. The use of electric gadgets and special devices for torture, brutal forms of assault and special forms of torture for women are among the worst instances which is so frequently reported to courts in these countries. Still, despite various declarations, the attitudes adapted by the judiciary and the human rights commissions do not show a great resolve to bring such practices to an end.

Surprisingly, the community leaders including the religious have taken very little interest in this discussion. There is hardly any attempt on the part of the religious groups to promote the understanding of the convention among their religious groups and also to take part in the social discourse to make the application of the convention widespread.

The question that we should ask in the face of this context is, 'why is there such a reluctance on the part of the Churches, the religious bodies that spouse non-violence and are committed to the prevention of torture and violence to address this issue?' 'Is it, that the efforts of the UN, the various governments and the courts have gone unnoticed by the community leaders?' 'Or is it that the community leaders do not think that these legal provisions are made with a serious intent and therefore they do not believe that these provisions will be enforced?' 'Or is it that, the community leaders think that the provisions against torture, inhuman and degrading punishment cannot be enforced?'. 'Or, are there deeper, social and psychological problems associated with the issue of torture? Can it be that it is too much of a traumatic problem for religious groups to go into the issues of torture, inhuman and degrading punishment? If this is the case, what then are the reasons? Why is it so traumatic to go into these issues?

Often, particularly in Asian Countries ethics are found to be those rules which are taught by the authorities to discipline the people. The system of ethics, which is imposed on governance seems to have had much less application. Sometimes, references are made to Asian traditions where the kings too had their duties and were expected to rule righteously. The contemporary problem is that for millenniums there had not been any such practice of making the king or the ruling elite being subjected to any rules. The question of absolute privilege is what we have when it comes to the elite. Torture, inhuman and degrading punishment were acts done by the elite to the ordinary people. The acts of violence of ordinary people against each other are considered crimes. Acts of violence by the authorities are generally considered the legitimate exercise of authority.

The mental association of the exercise of authority with the use of torture, inhuman and degrading punishment, may be a main cause for creating a serious mental block in considering the convention against torture, inhuman and degrading punishment. In this conference we wish to examine very closely as to why the community groups including the religious are reluctant to take an active part in promoting the ideas of the convention against the practice of torture, inhuman and degrading punishment. Individual participants of the conference may examine their own attitudes towards this practice. A frank examination by the participants individually on why or whether they have been in the past taking an active part in this campaign and if not why, could serve as a very useful beginning. The question is, does torture, inhuman and degrading punishment create an indignation in you? If it does, then you could examine how that attitude grew. Was it due to the witnessing of such acts and the realization of the utter brutality and un-justifiability of such acts? On the other hand can one also examine whether there was any such outrage when one heard about such practices. Is it possible to examine why no such outrage is felt?.

**THE OBJECTIVE;** Inviting the Religious groups to think about the problem and getting the support of the community for the reforms proposed by the concerned lawyers.

#### **PROGRAM FOR THE SEMINAR**

The major items are:

- 1) Study of the Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- 2) Study of the country situations and cases,
- 3) Find ways to popularize the conclusions of the seminar e.g., through , through seminars, discussions, pastoral letters, country meetings, posters, publications etc.

#### **IMMEDIATE PREPARATION:**

- 1) Read the Convention,
- 2) Answer the questionnaire,
- 3) Come prepared with experiences for reflection.

## **The Statement of the Seminar**

---

A group of twenty five persons from India, Nepal, Sri Lanka and Bangladesh gathered at Bangalore, India from 21<sup>st</sup> to 25<sup>th</sup> of February in a workshop on Ways the Religious Groups can Promote the UN Convention against Torture. The following are some of the basic ideas that emerged out of the discussion at this workshop:

- 1) There is widespread practice of torture throughout the S. Asian Countries. The extent of this practice is enormous; the methods used are most brutal, barbaric and inhuman; the victims are mostly from the poorest sections of the society; the victims include women and children; rape remains quite common. Both physical and mental forms of torture are involved. In many instances deaths are caused as a result of torture.
- 2) All S. Asian countries are signatories to the Covenant on Civil and Political Rights ICCPR and Convention Against Torture - CAT. Some countries have ratified the convention and even signed the second protocol ICCPR. Some countries have made their own local laws in terms of the UN Convention and have made torture an offense punishable with imprisonment. However, India has not ratified the CAT despite the strong recommendation made to the Indian Government by the National Human Rights Commission.
- 3) It must be noted that the Right against Torture and Inhuman and Degrading Treatment or Punishment is an absolute right and no derogation under any circumstances is recognized as limiting or mitigating this principle.

- 4) In all S Asian countries there are remedies through courts and other institutions like National Human Rights Commissions to investigate and take appropriate action against torture. However these remedies remain mostly confined to books. While in some instances a degree of redress has been obtained, by and large the practice of torture has not been deterred due to the existence of such remedies. The actual application of such remedies depends on the will of the each State to eradicate torture. While the States verbally proclaim their allegiance to the principle of international law and constitutional provisions in their countries to eliminate these practices of torture, they are not implemented by way of proper political decisions to allocate funds and other resources for their realization. In fact the politicians in many instances collaborate with unscrupulous elements in the law enforcing agencies in continuing with the practice of torture.
  
- 5) S. Asia is known for its variety of religious traditions. All religious traditions speak of the dignity of the person and the sacredness of social relationships. These fundamental values can in no way be reconciled with the practice of torture. However the actual resistance led by the religious groups against the use of torture is negligible. Sadly, it has to be noted that all religious groups in the region which have enormous influence in the community, have failed to give the necessary inspiration and the leadership to the community to resist the widespread abuse of human dignity by way of torture and other forms of inhuman and degrading treatment or punishment.

- 6) However, at local levels the leaders of the religious communities such as the monks in the temples, the parish priests in christian churches, and the clergy of other religions, are constantly confronted with the victims of torture and other forms of degrading treatment or punishment who are members of their local communities. Such local religious leaders often have to intercede with the law enforcement agencies to seek protection for such victims. The persons providing such services also include clergy, nuns and lay persons involved in social action in general and human rights work in particular. These persons do come under the definition of the human right defenders within the meaning of the term now being used internationally. Often as a result of their work they too come under the wrath of persons and agencies that engage in the abuse of peoples rights. Some have had to pay with their lives in their attempts to defend the rights of others.
  
- 7) The participants of this seminar came from various organizations that are committed to defend the rights of people. They brought in variety of experiences of grass root work in which they have been engaged for many years. These include working with the Dalit groups, who are the most oppressed and neglected community in India consisting over 20 per cent of the population; persons engaged in the defense of human rights of various groups and persons in their countries; persons engaged in legal aid and human rights education; persons engaged in media trying to expose human rights abuses; persons engaged in urgent appeals and networking and persons engaged in activities related to legal reforms aimed at promoting human rights. It was their common experience that the respect for human rights in their countries still remains at very negligible levels and enormous improvements have to be made if the people are to enjoy their basic rights.

- 8) The recent developments in the political systems have begun to erode resulting in the loss of even the basic rights that people have enjoyed in the past. In many countries there is a clear breakdown of the rule of law. The law enforcement systems have either collapsed or are in a serious crisis. Unless due recognition is made as early as possible of the grave problems emerging in the legal and law enforcement systems, an uncontrollable situation of anarchy can emerge in many parts of South Asia. The local populations and the international community should give due consideration to these problems if catastrophic situations are to be avoided. If the religious groups do not pay attention to this situation they themselves will become victims of the resulting anarchy.
- 9) A further point to note is that ironically some religious groups encourage violence against the other religious or the ethnic groups. South Asia has come to be known for its internal violence and the future of S. Asia depends very much on how these problems are addressed.
- 10) There are many instances where the religious groups have used violence against dissidents within their own groups. The freedom of conscience is often denied on religious pretexts. These are issues that any religious group seriously reflecting on UN Convention against Torture must seriously consider.

11) One of the basic experiences of the people living in S Asian countries today is the peoples' rapid loss of confidence in the legal system, particularly in the criminal justice system. The loss of faith is so acute that there are many instances when people seem to take the law into their own hands in resolving their problems instead of relying on the legal system. Peoples' loss of faith is a result of their own experience of the inefficiencies of the system. It emerged from the discussions that there is a public perception to the effect that the politicians have begun to exercise a powerful influence over the law enforcement agencies. This is particularly so at the local levels where the officers in charge of law enforcement feel that they are obliged to respect the sensitivities of the local politicians while dealing with their law enforcement duties. This sense of diffidence in the independent functioning of the institutions have shattered one of the basic beliefs necessary for the functioning of a liberal democratic system. As the people withdraw from the system they have nothing but to rely on themselves. However, as the individuals feel unable to secure their own safety by themselves they do sometimes have recourse to forces outside the law. In such a context, illegal gangs begin to thrive and become a powerful force that threatens the society. As the influence of the illegal groups grow, the average citizen often have to withdraw or to change his or her way of life as well as of their families. They avoid night travel and take other precautions limiting the exercise of their freedoms in order to avoid possible threats to their lives and liberty. In some instances they even learn to possess and use arms as a last resort. The law Enforcement agencies begin to be treated as enemies rather than friends. The expectations regarding the possibility of leading a decent life recedes to the background. Seeking security becomes the primary preoccupation of people. Even though most people try to give the appearance of living normal lives and doing business as usual, they in reality live with the most abnormal state of mind and in intense atmosphere of fear.

- 12) These situation forces serious challenges to anyone who wants to re-establish the people's confidence in the law enforcement agencies and the possibility of the rule of law. It is becoming imperative to effect fundamental reforms in the law enforcement agencies. Mere declarations in favor of human rights and random punishments for some errant officers in no way suffice to convince the people of the ability of the law enforcement agency to perform normally and attend to their duties.
  
- 13) This situation poses a great challenge to the community organizations including that of the religious. They too form part of the society, share the problems as others living in the society and face the same insecurity. Besides, they witness the peoples' loss of moral values and having recourse to more primordial methods of survival. Some in the religious groups may condemn this situation as a descent of human beings into more animal forms of behavior. Whatever the high moral ground from which anyone may choose to condemn the collapse of the society and the resulting degeneration of morals, such condemnations in themselves do not help to rebuild the society and to sustain the moral values. The causes of the decay of the law enforcement agencies need to be addressed if the normal behaviour of the human beings is to be recreated. It is this challenge that the religious groups must now face. Perhaps the moment we face now may be similar to the situation that the eastern/western tradition faced during the time of Moses when the Ten Commandments were issued on a decadent society as a means of rebuilding it. In the Asian experience it has been said that at the time that Gautama Buddha preached was a period of moral decadence in the Aryan society and that Buddha tried to rebuild it on a more dynamic moral foundation.

**14) What the Religious Groups can do to Promote the Convention**

- 14.1) The Convention should be taught in all levels: the schools, universities, adult education centres, houses of religious formation and the villages.
- 14.2) The translations of the Convention should be made easily available in all languages
- 14.3) The explanations and the commentaries on the Convention together with the statement should be made available.
- 14.4) In all human rights meetings and publications there should be an explanation of the Convention and comments on how it is implemented.
- 14.5) For countries which have not ratified the Convention, and have not incorporated it into the domestic law, efforts must be made to expedite the process of ratification and implementation.
- 14.6) Human rights groups which are monitoring violations should specifically monitor violations under this convention. In S. Asia where there has been so many violations under this convention, the response has been quite poor. Compared to the extent of violations, the degree of reporting is poor.
- 14.7) Human rights groups dealing with legal aid should also pay special attention to victims of torture. More groups, including religious groups should be encouraged to provide assistance to these victims, at local levels such as the parish or village temple.
- 14.8) The idea of trauma rehabilitation must be introduced and supported. The victims and their families should have easy access to such treatment.
- 14.9) The medical profession must be sensitized to the problems related to torture. They should take special care to provide medical assistance, as well as proper medical reports which may be used at legal proceedings.

- 14.10) Human rights groups should make special efforts to obtain compensation for the victims; such compensation must be given speedily and must be adequate. Cumbersome legal procedures should be abandoned and easier forms of redress must be developed.
- 14.11) The national human rights commissions have a very special responsibility to provide redress to the victims of torture; they also should provide nationwide education against the practice of TORTURE. As the commissions have access to national media - print and electronic, they must use such media, on a regular basis to discourage and eliminate the practice of torture; and to educate the victims on seeking legal redress.
- 14.12) The religious groups which have their own media facilities such as newspapers, the radio or even TV time, should use such facilities to instruct people about the Convention and expose its violations.
- 14.13) The religious groups should also awaken the society to the problems emerging in recent times due to the collapse of the legal system, particularly the criminal justice system. They must remind the society that if the people lose faith in these institutions, very drastic consequences can follow, threatening the security of everyone. The religious groups can pay special attention to minorities who suffer most in this regard.
- 14.14) The modern media offers enormous possibilities of networking on this issue. Local, national, regional and international networks must be used for campaigning for this purpose. It is essential that the people gain the necessary skills in the use of such media, writing, and in communication. Special training should be given in writing through the courtesy of persons who already have such skills. The communications skills needed are sophisticated the people therefore must be encouraged to acquire them and the persons who have such skills must be encouraged to extend a helping hand.

14.15) The international rights day, 10th December be celebrated in the churches with fitting services aimed at promoting human rights and highlighting the Convention against Torture.

*Recommended reading*

- 1) Essay on Crimes and Punishment by Cesare Beccaria (Modern History Sourcebook)
- 2) Law : The threatened Peripheries (Chapter 2 in particular) by C.G. Weeramantry

## Follow Up Action at National Level

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### BANGLADESH

- 1) We will make a proposal to the National Human Rights Commission (which is at a formative stage) to form a Human Rights Task Force for investigating the H.R. violations.
- 2) We will take steps to introduce AHRC to the local NGOs who are working to defend H. Rights in order to maintain a good working relationship.
- 3) We will publish leaflets on legal advice to make people aware of their rights.
- 4) We will arrange awareness-building seminars workshops as we did before.
- 5) In our regular human rights training programs we will put emphasis on Women and Child Rights as it is their rights that are often violated.
- 6) We will arrange seminars and workshops on the bad effects of dowry and divorce.
- 7) We will arrange programs for different religious groups for dialogue and to raise their awareness of the H.R. norms and the UN Conventions.
- 8) We will try to introduce H.Rts education to high schools.

### PROPOSALS TO AHRC

- Dowry is a burning issue specially in Bangladesh. We propose that this issue be discussed in future seminars of AHRC, if it is possible.
- We suggest that AHRC publications be circulated to H.R. organizations.
- We suggest to have a balanced number of men and women participants in the AHRC training programs/seminars.

## **SRI LANKA**

- 1) Organize a seminar to get a deeper understanding of the Conventions. The dates are already fixed: March 31- 3April, 2000.
- 2) The future strategies will be worked out at that meeting.
- 3) Until that time we will keep in touch with one another and be informed of the happenings of other H.R. groups in the country.
- 4) Special attention will be paid to the issue of disappearances and the deteriorating situation of law and order in the country.

## **INDIA**

Way of Promoting the Convention against Torture;

- 1) Effective steps should be taken to conscientize our own Religious groups on the Convention against Torture.
- 2) Efforts could be made to include the Report of this meeting and the Convention in the agenda of CBCI.
- 3) Concrete ways of implementing the CAT in Religious groups could be discussed in Inter Religious Forum and at the time of Inter Religious Dialogue.
- 4) Religious groups could work effectively in collaboration with NGOs.
- 5) A team consisting of Human Rights Activists and Advocates could visit the Prisons regularly to identify the victims of Torture and to learn the prison conditions.
- 6) The Convention should be taught to the jailers and prisoners, and human rights books could be given to them.
- 7) Rehabilitation centres could be thought of and the families should be taken care of by the Religious groups
- 8) In the schools students should be conscientized on the Convention.
- 9) Common Plan of action should be adopted in the schools to avoid fundamentalism.
- 10) In summer camps and Exposure Program students should be taught about this convention.
- 11) A report regarding custodial deaths and other forms of torture could be sent periodically to the religious groups by Vigil India Movement.

- 12) Like-minded people from different religions could work together with Professional Specialists for the promotion of the Convention. A Human Rights Day in the Church!

## **NEPAL**

Basic Problem in the Area of Human Rights Promotion in Nepal is:

- 1) Insurgent Activities in the name of Maoist Group declaring people's war.
- 2) Rampant Torture in Police custody.
- 3) Discriminatory treatment on the basis of caste and sex.
- 4) Defective value system towards women and girls which is resulting in trafficking of girls and unequal treatment.

The Solutions can be achieved by the following:

- Vigil Nepal Movement for the Promotion of Human Rights.
- Formation of the Proposed Vigil Nepal Movement for;
  - a) Informative role
  - b) Educative role
  - c) Reformative role
  - d) Remedial role
- Transparency in all organizations
- Plan to re-orient the politicians as well as the administrative authority.
- Centre for Legal Resources and Resource Development –CeLRRd will take the lead in the establishment of a “Vigil Nepal Movement” (to achieve the above mentioned objectives).

## Special Cases Studied

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### Case No. 1

#### The case of BHAVANI

Bhavani was 45 years old when she was tortured to death. She was a widow, her husband having been dead for 17 years. She belonged to Pulaya a dalit community. She was a worker with three children. It was her determination to get her children educated and in fact her son is an under-graduate and the two daughters are pre-university students. She had no property and lived in a poor hut without even a proper door. In the locality where she lived there were six families belonging to another separate caste. The members from these families often raped dalit girls and perpetrated other forms of violence. There was no point in complaining against them; in fact no one dared to complain against them. However, Bhavani was an exception. Her courage led her to the police stations to make complaints against such activities. In fact over a period of two years she had made seventy two complaints against these persons. She had carefully kept photocopies of these complaints.

Under normal circumstances her complaints would have come under SC (schedule caste) and ST Prevention of Atrocities ACT. Under the provisions of these Acts these complaints should have been inquired into by a Deputy Superintendent of Police, Dy SP, without delay and the offences are non-bailable. However no investigation has been made regarding any of these complaints and consequently no action has been taken.

On the 1<sup>st</sup> of January 2000 while Bhavani was returning by bus from work, she realized that there were persons in the bus who intended to harm her. She refused to get down from the bus but was dragged out of the bus by about four persons and was assaulted. She was attacked with the stones taken from a heap of granite kept for road repairs. Later she was dragged to a cashew nut plantation and a big piece of wood was pushed through her private parts. She was left unconscious with severe bleeding.

After some time, having gained some consciousness she dragged herself to a nearby house and asked for some water from the woman in the house. She was given water and Bhavani narrated to this woman all that occurred to her giving even the names of the assailants. The woman then telephoned the police, who arrived a little later and took her to the hospital. At this stage too, Bhavani narrated her story to the police. At the hospital the authorities realizing how serious she was, informed the police to take her to the medical college hospital, which the police refused. She was not given any treatment at the hospital either. At the hospital she narrated her story.

The family, having received the news late, arrived at the hospital about 11 am next day. The family then took her in a car to the medical college and on the way she died in the arms of her children.

Despite the complaints, the police did not take up this case under the Atrocities Act, as they should have done. The local newspapers did not give adequate publicity to the incident. It was only after the attempted suicide by the youngest daughter in sheer frustration and after a local NGO had taken up the case that the police began to move on the matter. However the police action up to date remains thoroughly inadequate.

- The police had failed to act on her complaint. Had they done so, this tragedy would not have happened.
- The police failed to take the wounded person from the local hospital to the medical college hospital as advised by the hospital authorities.
- The hospital authorities did not attend to the victim; not even first aid was administered which would have saved the life of the woman and this amounts to gross medical negligence.
- The local police are apparently protecting the accused. They have deleted the name of NO.1 accused in the FIR, and have deliberately omitted relevant sections to save the accused.

## **Case No. 2**

### Massacre of 50 persons in August 1989 in the village Mahawatta, Kandy, Sri Lanka.

During the 1988 to 92 period over 30,000 persons according to official figures have disappeared in Sri Lanka. Unofficially the figure is over 60,000. During this period in Kandy the vigilante groups colluding with the police attacked one village causing over 50 deaths. In fact the actual figure is not known even to date. All the bodies were taken in trucks during curfew times and buried.

This incident has not been properly investigated even up to date. No person has yet been prosecuted and no legal action taken against anyone.

### **Religious (Nuns) Promoting Human Rights - sharing of experiences**

An example of grass-root involvement with some of the most oppressed groups in India, was shared by Sister L.C. Maria, Franciscan Sisters of Aloysius Gonzaga, where the sisters of her congregation work among the dalits, fisherfolk, and the tribal communities.

The experience of the Sisters is one of participating in a process where the people themselves learn to resolve their problems and thereby gain independence and the confidence to face society in their own terms. Particularly among the women folk, gaining of such self confidence and assertion of independence is found to be very difficult as they are oppressed by the male dominated society and the members of the higher castes. Their work among the dalits, the tribals and the fisherfolk has led to the formation of Sangams which are strong enough to resist attempts even by the police to Torture their members. Despite the harassment coming from the upper castes, they went on working among the low castes and the bonded laborers to get their land and to become freed from their bondage to the landlords.

Recognizing the importance of educating the Dalits, the tribals and the fisherfolk, programs were drawn up to educate them both formally and informally.

The study of human rights has become an integral part of their studies in the schools. The children and the parents now feel strong enough to assert themselves and defend their basic rights.

For their work they have been able to tap the resources made available by the government without being dependent on the foreign funding agencies. Besides, the sangams have been able to collect a good amount of money as a result of their savings and now the sangams run their own cooperative bank as well. Besides, they are able to get loans and other assistance from the Governments Banks in the locality.

## **Buddhist Monk Promoting Human Rights for Minorities**

– Sri Lanka

A few among a majority of individuals who are daily subjected to various forms of torture at the hands of the Sri Lankan Police that has tasted unlimited power under the prolonged Emergency Regulations, would approach the judiciary. Under the prevailing circumstances it was even possible for the police officers to settle personal scores. Corruption and injustices have become rampant.

In the present circumstances, the situation in the villages is considerably worse than that of the cities. While the military confrontation between the army and the LTTE is poised in the North and the North East, insecurity is experienced by all but particularly the members of the Tamil community who are often concentrated in a few areas in the city of Colombo, the plantations and the Sinhalese/ the Muslims living in the border villages. The ordinary people who are exposed to hazards like bombs are often the targets of harassment by the police.

It is apparent that the ordinary people are making enormous efforts to ensure their safety.

But it should never be permitted for any section of the society to be exposed to unfair and extreme forms of injustice and harassment particularly when they are the poor and the marginalised. Of the latter, the Tamils are an easy target. A greater surveillance of the Tamil people on grounds that some of them may have been coaxed to join the LTTE is understandable. But if they are harassed, imprisoned, humiliated and searched simply because they are Tamils, then there is no truth in the saying that the war is against LTTE and not against the Tamil people. Moreover, if the citizens of the country are equally silent about it.....

Some discernible trends that emerged, following the search operations conducted after April 19 in and around Colombo:

#### Houses and the Lodges being Searched

The frequent search operations in the areas of Bambalapitiya, Wellawatta, Dehiwala, Kotahena, Kochchikade where the majority of the tamils reside, are generally conducted at night.

While the search operations are conducted by the combined forces of the local police, the CID, army intelligence units, they come either in their uniforms or civilian clothes. Addressing the people decently and revealing their identity should not become a problem to their search operations. While the occupants are huddled into one room during these search operations, there have been instances of reported loss of jewellery. Ladies in their night dresses being questioned and at times being taken to police stations for further questioning without being allowed to wear normal dresses has led to embarrassment and humiliation.

Since it has been a requirement that the Tamils living in the cities report their presence to the nearest police station, any failure regarding this matter can allow them to be picked up by the police. Any suspicion regarding the ID can see them end up in the police station. The time period required for their search and release can vary.

The persons thus taken in are often kept with the detainees and it is not uncommon that they are harassed or beaten. Even though it is a technical requirement that on arrest they are issued a notice, it rarely happens.

#### Vehicle Checks and Detention (on the road?)

The public buses that ply in the areas of majority Tamils, eg. Numbers 102, 112, 155, 168 are often searched. On such occasions the Tamil persons are kept behind while the others are allowed to continue their journey; and it is very rare that the ladies searched by the lady police officers.

Since the reporting requirements can vary from officer to officer the Tamils are often at a loss to know what to report. What is worse is that in case they are taken for further questioning, there is no way to inform their kith and kin about their whereabouts, despite the fact that it is the responsibility of the detaining officer to do so. In the absence of such provisions, the chances of disappearances are obvious. Not many in fact are aware of this provision. Even in cases where it is known, it is rarely used. Therefore it is the responsibility of the detaining officer to attend to this matter.

#### Tutories, Kovil and the Lodge Checks

It is been reported that the youth at tutories, Kovils and the lodges are questioned and detained.

The lodges that are being frequented by the long distance travellers and the late comers are often checked. When they are questioned, instead of recognizing the fear resulting from ignorance or the poor knowledge of Sinhalese, the obvious attempt has been at instilling further suspicion and fear. It is the perception of the Tamils while they are in Colombo they should be subject to any form of harassment. This feeling in fact has been exploited by some unscrupulous persons.

#### Confining the Suspects to Prison Protection

There is no accepted time line or a system for the suspects to be produced before the magistrate. This has paved the way for bribery. These suspects who are sent to prisons like Mahara where the common criminals are housed, are often exposed to all forms of ill treatment. There are even reports of sexual harassment.

There is a tendency to release these suspects on bail. But hardly anyone would be prepared to pay the bail. This has provided the setting for the emergence of persons/groups with vested interests.

Such mishaps are generally faced by the Tamils who lack political patronage. The outcome is nothing other than the harassment of ordinary Tamils which will eventually lead to further deterioration of the relationship between the two communities.

Let not the persons taken into custody  
for security reasons be treated like criminals

*We recommend:*

1. Alternative places be found for their detention,
2. The adoption of speedy procedures and their registrations in investigations,
3. Conduct inquiries in a manner that safeguards their dignity particularly of the women,
4. Strict observance of the procedures laid out by the government in the detaining of persons,

*To ensure their speedy implementation;*

*Our Action:*

- a) possibility of discussions with the police,
- b) formation of citizens committees that can look into these matters,
- c) contacts be established either by phone or by visits to the police stations once the reports of arrests are reached – It is our intention to form such a committee.

*The least expected from the committee would be to get the following information from the police:*

- Verification of the claims of arrest,
- Verification of the arrest,
- Whether there are any papers relating to the arrest,
- The date on which she/he would be produced before the magistrate.

## **Legal Aspects**

### **Articulating Violations of the UN Convention Against Torture**

Dr. P.J. Alexander and Fr. George Pulikuthiyil, Advocate

1. In this discussion we have adopted the definition of Torture as found in Article I of the Part I of the Convention and Article 5 of UDHR. It is emphasized that Torture is not permitted under any circumstance.
2. Under the Indian Penal laws the use of force by the police is prescribed under certain circumstances. This is primarily in regard to the police role in maintaining law and order. When a large body of people threaten to disturb public order and tranquillity, the police by themselves or with the Executive Magistrate declare them an unlawful assembly and direct them to disperse and if they refuse, after due warning the police can disperse them using force - teargas, lathicharge, or opening fire in that order where possible.

There are two basic safeguards in the law -

- a. Use of minimum force
- b. Under magisterial supervision

Where there are allegations of excessive use of force a Judicial inquiry can be ordered.

There are thus the built-in-safeguards against indiscriminate use of force by police even in dealing with the law and order.

3. In respect of the crime control and investigation, the law doesn't permit the use of force under any circumstance except when arrest is resisted by the accused/suspect and as part of the right of private defense by the police.

4. It may be clarified again that the use of force by the police without being sanctioned by law is an offence under the Indian Penal Code and that they are liable to be proceeded against. This is also the position with regard to the use of force/violence/torture by private individuals/organised groups against others.
5. India is not a signatory to the Convention Against Torture (CAT) and so far no separate legislation has been enacted. Therefore, relief against “Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” is available only under the penal law and through the NHRC/SHRC/Women’s Commission/ Petitions committee of Legislature etc.
- 6.1 However, under the prevailing Indian conditions there is a great deal of tolerance of routine use of force by the police. By and large many violations are ignored and it is only in the rarest of cases that action is sought against the police.
- 6.2 In the investigation of crimes, the police have been, for a long time, taking advantage of certain gray areas and employing force / torture to extract confession or information. This is virtually ignoring the mandatory provisions of the Evidence Act, the Cr.P.C., and the Constitution. The legal ban on Admission / Confession to police officers being admissible in evidence is overcome by “discovery” of material objects under s.27 of the Evidence Act. The ban on getting statements of witness attested is overcome by Cr.PC S.164 statements recorded by Magistrate and by section 160 Cr.P.C. directing to answer truthfully the questions of SHO. There is also informal arrest (for surveillance), pressure through threat to arrest / humiliate female members of the family, etc. Such lapses are condoned or ignored as necessary to produce results.
- 6.3 With police association of lower ranks functioning almost like Trade Unions and the political executives manipulating the individual police officers through ‘carrots and stick’ method, in many instances the use of force / torture, the guilty are often shielded, out of political loyalties.

- 6.4 It is generally assumed that no one would get a patient hearing. No average citizen takes the police station/office as an outlet for services like other government offices or take courage to demand any services. The police offices are generally avoided and therefore many instances of abuse are not reported even to the higher levels. In reporting offences also people are generally selective, weighing the pros and cons in view of the unpredictable responses. Police statistics thus do not represent the true state of crime or violation of HR in society.
- 6.5 There are many built in safeguards in favour of the erring officials in the Indian system. Private prosecution requires government permission, civil suits, advance notice etc. Such officials are defended at government cost.
- or
- a reasonably quick response from the police, unless they are pressurized through political contacts, caste/community/professional bodies etc. Where such influence is brought to bear, it is two-way traffic, both sides taking advantage of each other and gaining mutual benefits. The poor and the marginalised, without patronage suffer acute neglect.
- 6.7 Where such pressure is brought to bear, lurking of crime, tampering with evidence, records etc occur right from the stage of FIR through to prosecution. This operates mostly against the poor.
7. It has been mentioned that the police employ force as a routine response practically on everyone – complainant/accused or witness. There is also the use of force during arrest and investigation to extract information and as an exercise of the police power.
8. Complaints against use of force/torture by the police are generally avoided as people apprehend reprisals. This is particularly true in respect of those who do not have the protection of support organizations. In the large majority of violations, victims opt to be silent.

9. Police response is often coloured by caste/community/status and political sympathies. These strongly indicate that NGOs, activists, religious as well as secular groups have to be the voice of the people who are forced to suffer in silence.
10. There is no set strategy for articulating public grievances against the use of force, torture, degrading behavior etc. Generally speaking every institution of civil society must be used for the purpose. Courts through private complaints/writs, checks and balances; institutions through demands for intervention, the press and electronic media, progressive elements among the public, opinion makers, social and political workers, lawyers, doctors etc, through education. The potential of religious organizations at the grass root level, especially in conjunction with other groups, is immense.
11. Activists/NGOs must take the initiative and should not wait for the affected to come to them; visit the victim/scene of atrocity, take steps to erase fear and build confidence among the affected through public meetings, protest marches etc., brief the press and the electronic media; form Action Committees and Vigilant Groups for specific tasks like scrutinising police action, securing legal aid, documentation and dissemination of information to press, approaching higher authorities, net-working among NGOs etc. The case of the victim must receive prominent attention and all true facts must be brought to light, since creating a favourable public opinion is a deterrent. There has to be a systematic analysis of feed back, and rearranging and refocusing of strategies in the light of such a feed back.
12. The Parishes are strategically placed at the grass root level. Prayer groups in the parishes are support groups. It must be possible to galvanize them to respond positively. Other secular groups also must be brought in to avoid being labeled sectarian. In the last analysis the lay initiative is very important. The Church hierarchy has great role in mobilizing public opinion and making the matter heard at higher levels. The religious groups therefore must be made an ally of Human Rights activists.

13. The motto must be to remain in the forefront throughout the agitation and the 'watch word' should be "**Lay bare, Go Public**".
14. It is ironic that the purpose of all these exercises is to save oneself from our own police and their atrocities. The police force is an organization set up to serve the people. Therefore the long term goal should be to reform the police so that they function in respect of UDHR, CAT and basic freedoms. Adequate HR inputs must be included in their training at different stages.
15. In the last resort, it is an axiom that the people have to stand up for themselves. It should be the function of religious organizations and HR activists to strengthen lay initiative, gather support from religious groups like prayer groups, parishes etc., and convert them into useful building blocks. No religion can tolerate torture or violation of HRs, and therefore the religious groups must be made our natural allies and supporters.

## **Pope John Paul II on Torture**

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The Church and believers cannot remain insensitive and passive, therefore, before the multiplication of denunciations of torture and ill-treatment practiced in various countries on persons arrested interrogated or else put in a state of supervision or confinement. While Constitutions and legislation make room for the principle of the right to defense at all stages of justice, while proposals are put forward to humanize places of detention, it is obvious, nevertheless, that techniques of torture are being perfected to weaken the resistance of prisoners, and that people sometimes do not hesitate to inflict on them irreversible injuries, humiliating for the body and for the spirit. How can one fail to be troubled when one knows that many tormented families send supplications in vain in favour of their dear ones, and that even requests for information pile up without receiving an answer? In the same way we cannot pass over in silence the practice, denounced on so many sides, which consists in putting on the same footing those guilty, or presumed such, of political opposition and persons who need psychiatric treatment, thus adding to their pain another motive, perhaps even harder to bear bitterness.

*The address made to the Diplomatic Corps in 1978*

*The following is a statement made at the beginning of the meeting indicating the manner in which the workshop is to be conducted*

## **The Mode of Conducting this Workshop**

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This workshop will be conducted in the same manner that the other workshops of AHRC, ALRC have been conducted in the last five years. Such workshops are not lecturing sessions. Essentially the workshop is conducted like a brainstorming session. The idea is to avoid repeating generally known ideas and facts and to enter into discussion on areas where there are doubts requiring clarity.

From the start, that is from the session on orientation and personal introduction, the participants are encouraged to come out with the problems that they have faced in trying to achieve the aims related to the theme under discussion. In this instance the theme is the prevention of Torture and the other Inhuman and Degrading Treatment and each participant will have his or her own experiences in trying to pursue this aim and the various difficulties faced in doing so. The workshop will be a success to the extent that these personal experiences are brought out, listened to and thoroughly discussed. Some working programs for the future can emerge only if the actual difficulties are surfaced during these discussions.

After the orientation and personal introduction, some basic areas that need to be studied will be identified. This initial identification is only for the purpose of initiating the discussion. As the discussion proceeds new issues are likely to emerge and these will be incorporated with the issues initially identified.

A part of the approach in these sessions is to delve into the issues as thoroughly as possible. Thus making of statements will not suffice. The group will have to scrutinize such statements from the point of view of their experiences.

At the end of each day the organizers will make a summary of the discussion which took place during the day and make such summaries available by the next day. This practice helps to avoid repetition as well as to go into more in-depth discussions completing the reflections begun on the previous day.

From time to time the group will identify panels from among the participants for discussion of one or the other issue that is identified as needing more thorough reflection. The panel will consist of persons who have a greater knowledge on the particular issue identified. The participants can then respond to the views expressed by the panelists.

Towards the last two days of the workshop, a considerable consensus is expected to emerge on some basic areas related to the theme. These ideas will be developed by way of final statement, which can be shared with others and used to influence opinion on the issue. Thus the workshop is not merely a session for clarification of ideas among the participants, but is also a pedagogical session where materials will be prepared for sharing with others in campaigns for promoting action against torture, inhuman and degrading punishment.

Usually in the course of such intense discussions many ideas emerge for future action. This type of meeting also helps to bring closer links among the participants. Such links help to bring about a new network for action and collaboration.

Though the workshop discussions bear a very spontaneous character, they also are accompanied by very serious reflections.

## **Submission to the UN Commission on Human Rights by AHRC**

Civil and political rights, including the question of:  
TORTURE AND DETENTION

29 December 1999

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Torture and inhuman and degrading punishment remain one of the major violations of human rights in most countries of Asia . While there is quite a lot of evidence of torture in many countries, there are some instances where obtaining direct evidence is difficult due to restrictions on access. Thus these submissions relate to instances where there is overwhelming evidence related to torture or inhuman and degrading punishment.

Many cases have come before the Supreme Court of Sri Lanka by way of fundamental rights applications under section 126 of the Sri Lankan Constitution, complaining of torture. In several of these cases the court has decided the case in favour of the applicant. Many more cases have come before the Human Rights Commission of Sri Lanka. There are also instances where complaints are made to the human rights NGOs locally, regionally and internationally. Sometimes the applications are not pursued due to the pressure from the authorities and due to the fear of reprisals. The torture cases relate not only to political cases but also ordinary criminal cases. The major cause contributing to the use of torture is the underdeveloped nature of the criminal investigation system in Sri Lanka. The use of forensic methods and scientific investigations into crimes is rarely resorted to. The usual system of collecting evidence is through statements and these statements are often obtained through the use of pressure or force. Though Section 27 of the Evidence Ordinance has created safeguards against confessions, merely making parts of statements which amount to direct confessions inadmissible does not act as a deterrence against the use of torture, since other corroborative evidence discovered as a result of confessions are admissible. This loophole allows law enforcement agencies to use torture as a means of collecting evidence.

The use of torture and other ways of punishment which is inhuman and degrading, is also related to corruption. There is a public perception that undue advantages cannot be obtained from criminal investigations unless the officers concerned appear to be rough and tough, and prepared to use violence. The Supreme Court of Sri Lanka entertains applications against torture when an applicant is injured or otherwise hurt due to torture, but according to a recent case decided by the Supreme Court, the Court will not entertain cases if the person concerned dies due to torture. The explanation is that the aggrieved party himself or herself should make the application to the Supreme Court under Section 126 of the Constitution. Since a victim who has died due to torture cannot be an aggrieved party before the court, no application can be filed in such instances. This interpretation given to the aggrieved party points to an absurd aspect of the law relating to torture. Though this required a constitutional amendment the government has made no attempt to make such an amendment in order to enable the families of the victims who die because of torture to avail themselves the remedies available under Section 126 of the Constitution.

Though an act has been passed in Sri Lanka, entitled 'Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment Act' (Act No.22 of 1994), no cases have been filed under this act as yet. The reason is that under the Criminal Procedure Code of Sri Lanka criminal investigation resorts under the police and as the alleged perpetrators of acts of violence are often the police, there is naturally an impediment for filing cases under this act. The prosecution of cases is the responsibility of the Attorney General, and the Attorney General must make suitable provision to ensure that all violations of this act are prosecuted. Thus while the passing of this act has created a good international impression for Sri Lanka, in actual fact it has not brought any benefit to those who suffer torture and inhuman and degrading punishment. If this act is to fulfil its purpose, special provisions must be made for investigating of crimes committed under this act.

In Thailand the practice of shackling of prisoners still persists. The prisoners are shackled in heavy chains, like the ones used to tie elephants, even when they are kept in cells which are securely locked while they are waiting to be called before Courts. The practice of shackling prisoners in this manner dates from medieval times. Such shackling clearly falls under inhuman and degrading punishment. Such shackling should be declared illegal and more suitable methods must be developed to ensure that prisoners do not escape while in custody.

Custodial deaths or 'cell murders' remain a common occurrence in India. The complaints related to this matter are constantly being made to the National Human Rights Commission of India and many local and international NGOs who have collected considerable statistics relating to this. Cell-murders are clear evidence of use of torture after the arrest of persons. If lawyers are allowed to be present while the statements are recorded from the accused such cell murders and other forms of tortures used during detention can be prevented. As a considerable number victims of torture are from the lower castes, particularly from the Dalits (who were once known as 'untouchables,' 'schedule' caste and 'Shudras'), the protection from torture should be considered also as a very important step towards the protection of marginalised groups and minorities.

Similar problems relating to torture, inhuman and degrading punishment as in India and Sri Lanka also prevails in Pakistan, Bangladesh and Nepal.

In Cambodia, the prosecutors often get complaints relating to torture and inhuman and degrading punishment. Since the eighties, confessions have been the main evidence used against the accused. Though the 1993 Constitution has imposed restrictions on such use of confessions, this has had very little practical impact. There is no legal forum before which any victim of torture can place their complaints. Even the government openly accuses the courts of corruption and the minister of justice suspended two senior judges in December 1999. Torture is used also for the purpose of making illegal gains.

A number of cases of political prisoners have brought to light the use of torture, inhuman and degrading punishment in Malaysia. The Assault on former Deputy Prime-Minister, Anwar Ibrahim, while he was in prison custody, by the Chief of Police himself, created an uproar in Malaysia and outside. A number of accused in other trials related to political cases also made public complaints about physical assaults and other forms of physical abuse, including the use of electrical shocks.

Thus, it can be said, the abuse of the right to be free from torture, inhuman and degrading punishment widely prevails in most parts of Asia.

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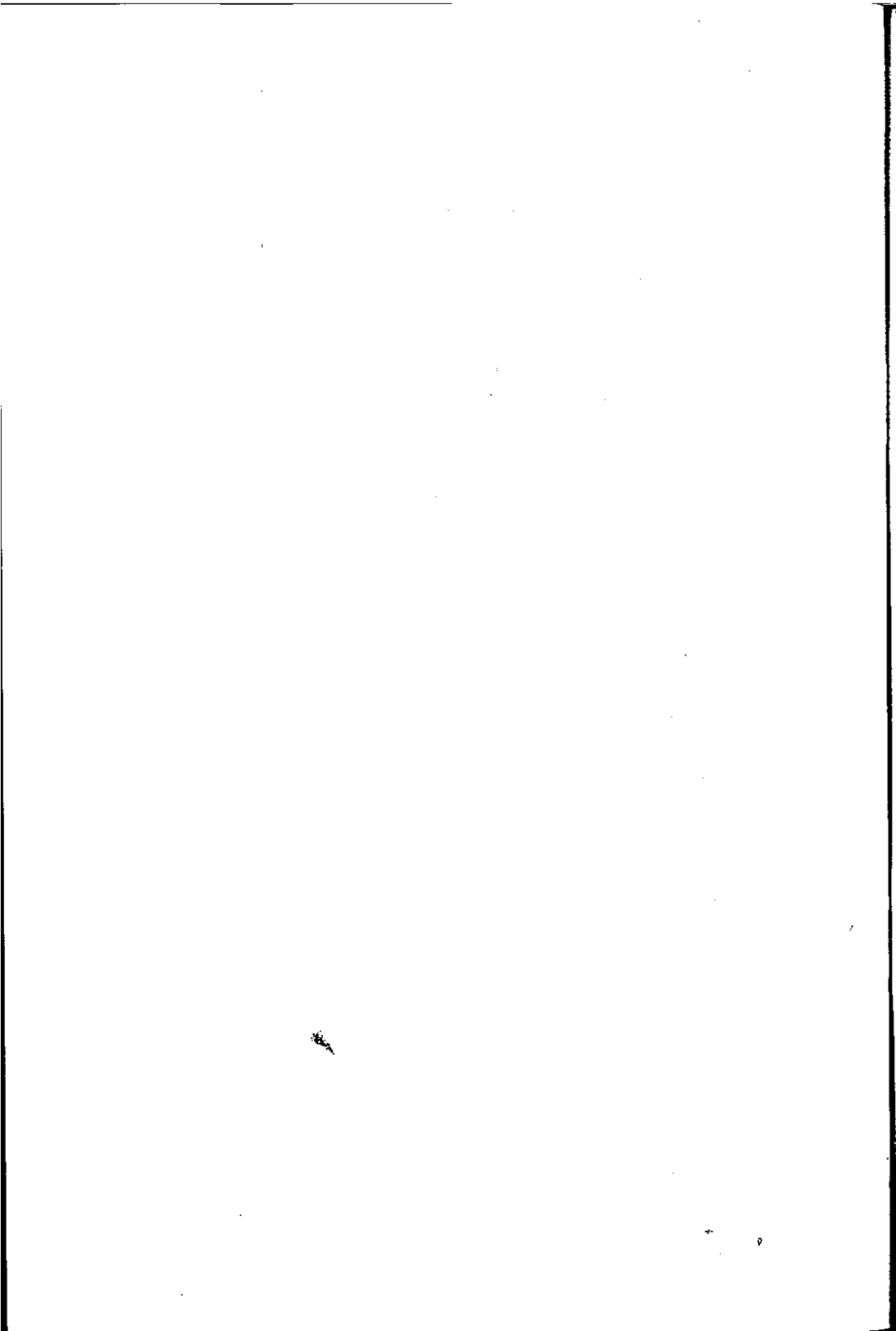
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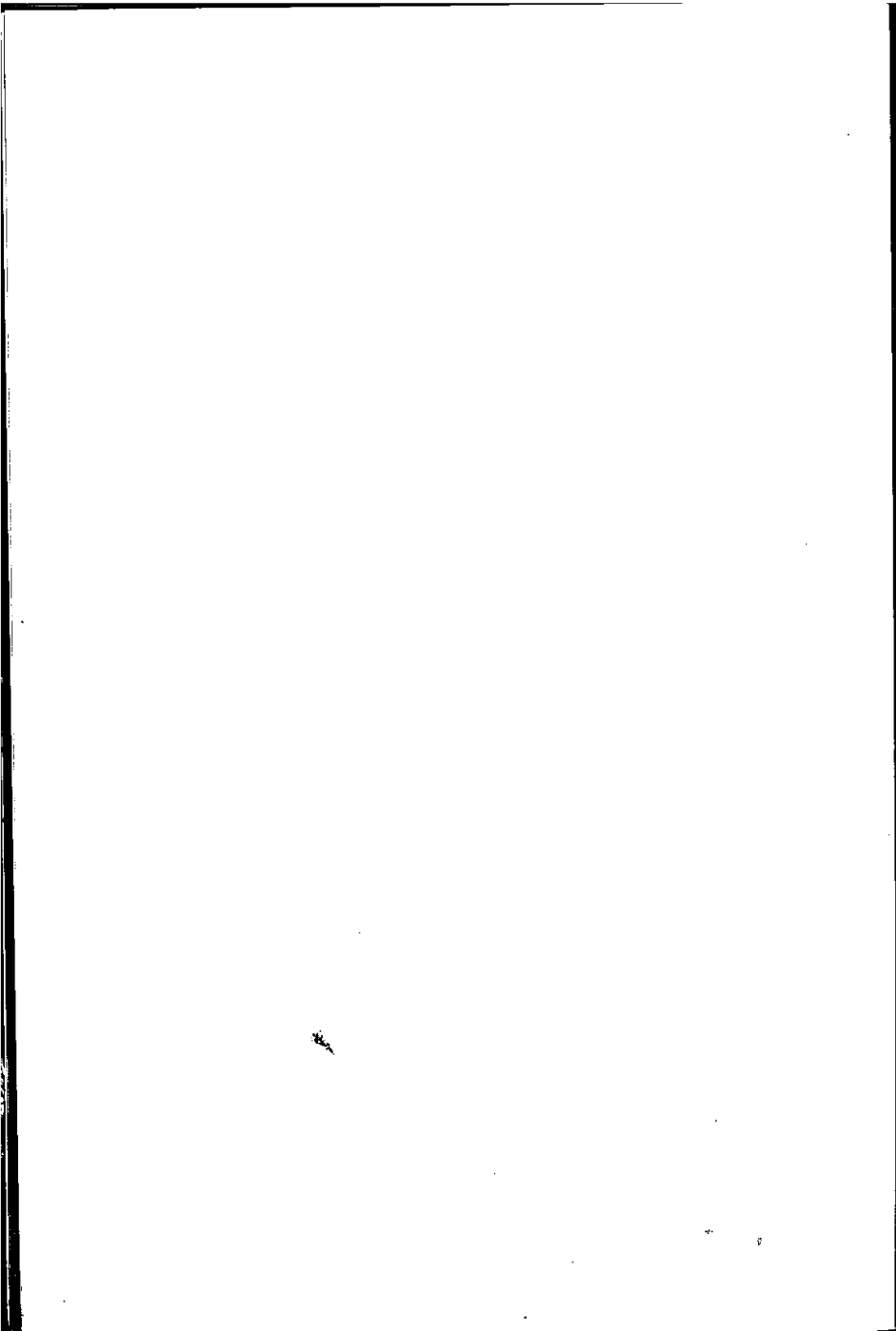
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This publication comes at a crucial time in the development of human rights in Asia. The Asian Human Rights Commission is receiving new cases of torture to respond to each week. Newspapers are reporting incidences of torture. Ordinary people are learning how to record incidences of torture so that international action can be taken. People are discovering that they do not have to accept torture as an essential component of society in this new Millenium.

All of the major religions aspire to a higher existence for humans, a happiness of the spirit and a world in which the divinity of each human is truly appreciated. At the opposite end of the spectrum exists torture – the most base and vulgar reality of human existence, aimed at breaking, disfiguring and destroying the human spirit and person. Yet the religious organisations have been notable in their absence from the movement to rid the world of torture.

*The UN Convention Against Torture and Other Forms of Inhuman and Degrading Treatment or Punishment* has been ratified by surprisingly a few countries in Asia, leaving great opportunities for religious groups to encourage the ratification and observance of this Convention in their own countries.

With the disturbing rise in religious fundamentalism, those seeking cooperation between religions can find it in this issue. Torture is abominable to all religions and unacceptable to people of every religious persuasion, and those suffering include the members of our own local religious communities. Our collective action to implement this Convention can serve as a common ground on which we can work towards a more compassionate, enlightened and respectful world.



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